

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.

★ NOV 21 2006 ★

BROOKLYN OFFICE

-----X
TYRONE HOLMAN,

Petitioner,

- against -

ROBERT EBERT, Superintendent, Otisville
Correctional facility

Respondent.
-----X

MEMORANDUM AND ORDER

CV-06-3618 (BMC)

COGAN, District Judge.

Pursuant to this Court's Order to Show Cause, dated July 26, 2006, petitioner was ordered to show cause why the Petition should not be dismissed as untimely. Petitioner filed an Affirmation, dated September 6, 2006, in response. Having reviewed the Petition and petitioner's response I have determined that the Petition should not be summarily dismissed. Therefore, upon the Petition of Tyrone Holman, appearing *pro se*, for issuance of a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254, a copy of which is annexed hereto and in accordance with Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts (28 U.S.C. foll. § 2254), it is hereby

ORDERED that the Clerk of the Court shall serve, by electronic transmission, a copy of (1) this Order, (2) the Court's July 26, 2006 Order, (3) the underlying Petition, and (4) Petitioner's Affirmation, dated September 6, 2006, on the attorney for respondent, the Attorney General of the State of New York, 120 Broadway, New York, New York 10271, and the District Attorney of Kings County, Office of the District Attorney, Kings County, 350 Jay Street at Renaissance Plaza, Brooklyn, New York 11201;

ORDERED that respondent shall file a limited answer to the Petition, addressing the timeliness of the Petition under 28 U.S.C. § 2244(d), within thirty (30) days of the date of this Order, with proof of service filed with the Clerk of the Court. However, if respondent concedes that the Petition is timely, respondent shall file a complete and entire answer to the Petition within sixty (60) days of the date of this Order, with proof of service filed with the Clerk of the Court.

It is further,

ORDERED that if the Petition is timely, respondent shall prepare the state court record to be produced and filed upon the Court's request;

ORDERED that respondent shall deliver a courtesy copy of its answer to chambers, and it is further

ORDERED that no reply is required, however, should petitioner want to reply, the reply shall be served on respondent's counsel and filed with the Clerk of the Court within thirty (30) days of receipt of the Answer.

The Clerk of the Court is directed to mail a copy of this Order to petitioner *pro se*.

SO ORDERED.

Dated: Brooklyn, New York
November 17, 2006

U.S.D.J.

